IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAl NO.1006 OF 2002

IN

WRIT PETITION NO.833 OF 2000

...

Municipal Corporation of
Gr.Bombay and ors. ...Appellants

v/s.

Barses J.A.D'souza and anr. ...Respondents

...

Mr.A.Y.Sakhare, Sr.Counsel with Mr.N.A.Shaikh for the Appellants.

None for the Respondents.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 31ST OCTOBER, 2007

P.C.:

1. By this Appeal, the Appellant-Bombay Municipal Corporation challenges the order dated 10th April, 2000, whereby the learned single Judge made an order in terms of prayer clause (a) of the Writ Petition filed by the Respondent.

Prayer clause (a) of the Writ Petition reads as under:-

> (a) this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents Nos.1 and 2 to cancel and set aside its demand for payment of Rs.19,14,848/- as municipal taxes in respect of the said lands more particularly described in Exhibit "A" hereto from the Petitioner, as evidenced by Exhibit "E" hereto and also cancel the auction of the said lands proposed to be held

by the Respondent No.2 on 11th April, 2000 at 3.0 p.m. in his office at Malad within Greater Mumbai.

Perusal of the petition shows that the Petitioner in the Petition was challenging the assessment of the property tax in relation to the property for the period from 1-4-1976 to 30-9-1976 and from 1-4-1980 to 30-9-1999. From the petition itself it is clear that though the Bombay Municipal Corporation Act provides for remedy against the assessment of the property tax, the Respondent did not avail of any of the remedies and filed the petition at the stage when for the recovery of the tax the property was attached and was being sold.

2. The learned Counsel appearing for the Appellant submits that the learned single Judge could not have allowed the petition at the stage of admission without allowing the Corporation to file its reply, especially considering that the writ jurisdiction of this court was invoked without exhausting alternate remedy and in the petition filed in the year 2000, the property tax demanded right from 1976 was challenged. According to the learned Counsel all

those aspects have not been taken into consideration and therefore the order passed in the petition is liable to be set aside.

3. None appears for the Respondent, though served. We have gone through the record. We find that the Petitioner has himself stated in the petition that he did not file any appeal provided by the Municipal Corporation Act against the assessment tax. However, in the petition he has not explained the latches in approaching the court. The Petitioner was challenging assessment of the property tax from 1-4-1976 to 30-9-1976 and from 1-4-1980 to 30-9-1999. In our opinion, therefore, before allowing the petition, the learned single Judge was under a duty to consider whether the petition filed by the Petitioner under the extra ordinary jurisdiction of the court can be entertained, though admittedly the Petitioner has not exhausted the alternate remedy and that he has not immediately, without any delay, approached the court. The order of the learned single Judge shows that none of these aspects have been considered by the learned single Judge. In our opinion, therefore, following order would meet the ends of justice.

O R D E R

(i) The order dated 10th April, 2000 passed in Writ Petition No.833 of 2000 by the learned single Judge is set aside;

(ii) That writ petition is remitted back to the learned single Judge for final hearing and decision in accordance with law.

(iii) Appeal disposed of. No order as to costs.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)